

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

DERRICK DION NEELY-BEYTARIK- EL,)
vs.)
Petitioner,)
SUPERINTENDENT, Correctional)
Industrial Facility,)
Respondent.)

ENTRY

Derrick Dion Neely-Beytarik-El's petition for writ of habeas corpus was filed on July 18, 2012. On July 30, 2012, the court directed that Neely-Beytarik-El supplement his habeas petition by restating his habeas claims with clarity and stating with respect to each of those claims a basis on which the court could grant the relief he seeks. The deadline for him to comply with those directions was August 23, 2012.

I.

On August 13, 2012, Neely-Beytarik-El's motion to stay pending actions and orders was filed by the clerk. He states in such motion that he "intends to proceed in the state court system to exhaust his state habeas corpus remedies."

In *Rhines v. Weber*, 544 U.S. 269, 277 (2005), the Supreme Court held that federal district courts have the discretion to stay mixed habeas petitions—petitions containing both exhausted and unexhausted claims—in “limited circumstances” not inconsistent with the “timeliness concerns reflected in [the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)].” *Rhines*, 544 U.S. at 277. The Court held that a “stay and abeyance” of a mixed habeas petition is appropriate only if (1) the petitioner had “good cause” for failing to exhaust the claims in state court, (2) the unexhausted claims are “potentially meritorious,” and (3) “there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.” *Id.*, 544 U.S. at 277–78. Stay and abeyance should be employed sparingly as it has the potential to undermine the rationale of the AEDPA’s statute of limitations, as well as the general purposes of exhaustion. *Rhines*, 544 U.S. at 277.

Here, the motion to stay does not directly or indirectly address the criteria established in *Rhines*. Also, the motion to stay does not independently establish a

sound basis on which to stay proceedings or even modify the schedule already established except for the slight adjustment directed in Part II of this Entry.

Neely-Beytarik-El's motion to stay pending actions and orders [9] is **denied**.

II.

Neely-Beytarik-El's shall have through September 13, 2012, in which to supplement his petition for writ of habeas corpus as directed in the Entry issued on July 30, 2012.

IT IS SO ORDERED.

Date: 08/31/2012



Hon. Jane Magnus-Stinson,
United States District Court
Southern District of Indiana

Distribution:

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